***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

75-2089

IN THE

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

B
P/S

NO. 75-2089

JAMES L. COBBS

Petitioner Appellant

VS.

CARL ROBINSON, WARDEN,
CONNECTICUT STATE PRISON
SOMERS, CONNECTICUT

Respondent Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

# APPENDIX TO BRIEF

BERNARD GREEN

64 Lyon Terrace
Bridgeport, Connecticut

ATTORNEY FOR PETITIONER



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PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

| | | |
|---|---|---|
| JAMES L. COBBS | : | |
| V. | : | CIVIL NO. B-74-262 |
| CARL ROBINSON, WARDEN, CONNECTICUT STATE PRISON, SOMERS, CONNECTICUT | : | |

MEMORANDUM OF DECISION

Petitioner, currently incarcerated at the Connecticut Correctional Institution, Somers, is serving a life sentence imposed after he was convicted of first-degree murder in 1968. Petitioner was tried before a jury in Superior Court, Fairfield County, and appealed his conviction to the Connecticut Supreme Court, which affirmed. State v. Cobbs, 164 Conn. 402 (1973), cert. denied sub nom. Cobbs v. Connecticut, 414 U.S. 861 (1973). He now brings this habeas corpus proceeding, contending that he is being deprived of his liberty in violation of the United States Constitution, 28 U.S.C. § 2254. Counsel have jointly submitted the extensive record developed in the state courts, and have agreed that the case be considered on the basis of that record and the pleadings and briefs submitted in this case. See United States ex rel. Chabonian v. Liek, 366 F.Supp. 72 (E.D. Wis. 1973); 28 U.S.C. § 2254(d).

Petitioner's first two claims derive from an apparently unique feature of Connecticut's grand jury procedures. Conn. Gen. Stat. § 54-45 provides that



> No person shall be put to plea or held to trial for any crime the punishment of which may be death or imprisonment for life unless an indictment has been found against him for such crime by a grand jury . . . .

Court decisions have expanded this right, and one accused of a capital offense is permitted to be present in the grand jury room and to put questions to witnesses called by the grand jury. He may not call witnesses himself, however, see State v. Menillo, 159 Conn. 264, 277 (1970); State v. Fassett, 16 Conn. 457 (1844), and is not entitled to be represented in the grand jury room by counsel. State v. Vennard, 159 Conn. 385 (1970).

Petitioner acknowledges that the United States Constitution does not normally confer the right to have counsel present during grand jury proceedings, see In re Groban, 352 U.S. 330, 333 (1957), but urges that a different rule should prevail where, as here, the state permits the putative defendant himself to be present at and to participate in the interrogation of witnesses, giving the proceeding more of an adversary character than the normal grand jury proceeding. Although the claim is not frivolous, cf. Gerstein v. Pugh, ___ U.S. ___, ___, 43 U.S.L.W. 4230, 4236 (1975), it has

previously been rejected in this District. United States ex rel. Delgado v. Robinson, Civil No. B-754 (D. Conn. Feb. 18, 1975) (Zampano, J.) at 8.

Delgado also disposes of petitioner's claim that the Constitution entitles him to a transcript of the grand jury proceedings that resulted in his indictment. Id. at 4. See also, United States v. Caruso, 358 F.2d 184 (2d Cir. 1966).



Petitioner's third challenge is directed to the manner in which the High Sheriff of Fairfield County selected the grand jury that indicted him. He claims that the selection was accomplished in an impermissibly unsystematic fashion,[1/] and that as a result of the process's deficiencies, certain groups were systematically and intentionally excluded from the grand jury.

The Connecticut Supreme Court, in affirming petitioner's conviction, gave a comprehensive description of the grand jury selection process.

> [A]fter the Superior Court ordered a grand jury to be summoned, the sheriff for Fairfield County personally summoned the grand jury. From 1959 to June 19, 1967, when the defendant was indicted by the grand jury, the sheriff and his predecessor had maintained a list of names in the sheriff's office. This list or panel of prospective grand jurors was revised through additions and eliminations when persons died, moved to different locations or no longer desired to serve. Names were added to the list by the sheriff on recommendation of his deputy or persons who had high standing in the community. All

persons listed were electors of above average intelligence and were volunteers for grand jury duty. The list included persons different in religious persuasion, race, national origin and political affiliation. The sheriff attempted to balance the list with respect to race and religious persuasion. In the five years prior to trial, only persons named in the list had been selected for the approximately fifteen grand juries called. The sheriff has never exercised his power of summons in order to obtain a grand jury. In summoning the grand jury for this case, the sheriff selected from his list forty-four persons whom he thought were best suited for service. From this group of forty-four persons the sheriff obtained eighteen persons. The sheriff avoided selecting persons from



Bridgeport, and most of the grand jurors who were selected in this case had had prior experience and had participated as members of grand juries on homicide cases. 164 Conn. at 406-407.

Where a state's grand jury selection process is challenged as discriminatory, this Court's role is a limited one. As Chief Judge Kaufman has written,

> Sitting as a federal court reviewing a state system . . . we are not at liberty to impose . . . our own views on which method we believe to be the ideal for grand jury selection. Our power is limited to determining whether the particular selection method . . . under review by us violated [petitioner's] rights to due process and equal protection . . . . United States ex rel. Chestnut v. Criminal Court of the City of New York, 442 F.2d 611, 615 (2d Cir. 1971).

This standard of review compels the rejection of petitioner's claim that the selection process was so "asystematic" as to

content only insofar as it objects to the non-random character of the process. There is, however, no requirement that a state's grand jury selection process rely on "random choice or the laws of chance," Brooks v. Beto, 366 F.2d 1, 4 (5th Cir. 1966); see also, United States ex rel. Chestnut v. Criminal Court, supra; Quadra v. Superior Court of the City and Cty. of San Francisco, 378 F.Supp. 605 (N.D. Cal. 1974), so long as the procedures used produce jury lists that reasonably approximate a fair cross-section of the community. See Smith v. Yeager, 465 F.2d 272, 282 (3d Cir. 1972). Petitioner, contending that this standard was not met in his case, has the burden of establishing a prima facie case of discrimination against a cognizable group. E.g., Alexander v. Louisiana,



405 U.S. 625 (1972). In the present case petitioner has explicitly disclaimed racial discrimination in the selection process,[2/] making that burden an especially heavy one. Fay v. New York, 332 U.S. 261, 283-84 (1947).

Petitioner argues vigorously that three classes of persons were systematically and intentionally kept off the list from which his grand jury was selected.[3/] The first category of persons petitioner claims was excluded consists of "all those persons in the county who were not personal acquaintances of the sheriff or his associates and who were not volunteers on the single, small, master grand jury panel . . . ." Br. at 26. The second consists of "those persons

who resided in Bridgeport . . .," and the third is made up of "those persons who were not of better than average intelligence." Ibid. The obstacle petitioner faces with respect to each of these groups is the same; none of them is a class whose absence from a grand jury list deprives that list of its cross-sectional status. The complete list of cognizable classes is of course not a settled matter. Compare Taylor v. Louisiana, ___ U.S. ___, 43 U.S.L.W. 4167 (1965), with White v. Georgia, 414 U.S. 886 (1973)(Brennan, J., dissenting from the denial of certiorari). None of the groups whose exclusion petitioner protests, however, has in sufficient degree the characteristics shared by those classes whose exclusion is prohibited. Petitioner does not contend, nor could he, that a grand jury proceeding in the absence of these groups would be biased in favor of the prosection, see United States ex rel. Chestnut v. Criminal Court, supra, 442 F.2d at 616. Petitioner does not attempt to show that any of these groups is



singled out, or even likely to be singled out, as the victim of community discrimination, see e.g., Hernandez v. Texas, 347 U.S. 475 (1954). Nor has petitioner

> alleged facts pertaining to community attitudes, a factor which is, along with the attitudes, subjective identifications, and common interests of the putative group members, critical in determining whether the class is a distinct identifiable group. Quadra v. Superior Court, supra, 378 F.Supp. at 620-621.

See Brooks v. Beto, supra, 366 F.2d at 23.

Conversely, systems depending heavily on volunteers and persons suggested by selected community members have frequently been approved. E.g., Swain v. Alabama, 380 U.S. 202, 207 n. 4 (1965); United States ex rel. Chestnut v. Criminal Court, supra; Brooks v. Beto, supra; United States ex rel. Epton v. Nenna, 318 F.Supp. 899 (S.D. N.Y. 1970), aff'd, 446 F.2d 363 (2d Cir. 1971). It is only when systematic exclusion of a protected class is demonstrated that reliance on a system of personal acquaintances becomes constitutionally deficient, Bailey v. Henslee, 287 F.2d 936 (8th Cir. 1961).

Residents of the City of Bridgeport are also not necessarily a cognizable class.[4/] No showing is made that the city lines also serve to separate racial groups or economic classes to any significant extent. Cf. United States v. Butera, 420 F.2d 564, 571-72 (1st Cir. 1970). Similarly, the attempt to include persons of better than average intelligence on grand juries is not proscribed by the Constitution, see Carter v. Jury Commission, 396 U.S. 320, 332-33 (1970), and might even be supported by the state's compelling need, Taylor v. Louisiana, supra, 43 U.S.L.W. at 4171, for



speedy and accurate decision-making.

In terms of the policies underlying the suspect classifications, the groups identified by petitioner have nothing in common except their failure to have volunteered for grand jury duty, their not knowing the sheriff or his

deputy or other persons of high standing in the community, their not being of above-average intelligence, and to some extent, their residence in the City of Bridgeport. These common characteristics, if they may be so described, do not rise to constitutional proportions. Cf. Dumont v. Estelle, 377 F.Supp. 374 (S.D. Tex. 1974). The members of these groups lack a "'fixed composition or thread which binds [them] into a cohesive group'"; there is "'no indication that the failure to canvass such persons defeats in any way the concept of an array from which impartial representative juries may be selected.'" United States v. Van Allen, 208 F.Supp. 331, 334 (S.D. N.Y. 1962)(citation omitted), modified on other grounds sub nom. United States v. Kelly, 349 F.2d 720 (2d Cir. 1965).

Petitioner also challenges the process by which the State selected the petit jury that convicted him, claiming that the panel from which the petit jury was selected was chosen in violation of Conn. Gen. Stat. §§ 51-217 to 51-221, and that he was thereby deprived of due process and equal protection. The record shows that the panel was randomly selected by the Fairfield County jury commissioners from lists of eligible persons compiled by the jury committees of twenty-three towns within Fairfield County. Section 51-221 requires that the jury committees select names by lot from the voting

lists of their respective towns, and other sections authorize exemptions from service for certain classes of persons. Petitioner contends, and the Connecticut Supreme Court agrees, State v. Cobbs, supra, 164 Conn. at 412-14, that the jury committees of six of these towns violated the jury selection statutes. Fifty-five per cent of the panel came from these six towns, and petitioner urges the Court to conclude that more than half of the array was therefore tainted. The record does not support his conclusion.

Petitioner alleges six statutory violations. First, women with children under the age of sixteen, who have a statutory elective exemption, Conn. Gen. Stat. § 51-218, were in some cases excluded by the jury committee members without being required to request the exemption. The trial court found that this in fact occurred in five towns. Petitioner is unable to show, however, what consequence this had on the total number of such women available for jury duty, even from those towns. In Easton, the evidence showed no more than that the committee members excluded such women whenever they were personally aware that a family had children under sixteen years of age. In Westport, the evidence was inconclusive, some tending to establish that the exclusion was automatic, and some that it occurred "on occasion." The finding does not resolve the question. In Fairfield, "many" such women were excluded; in Stratford such women "were not favored";

and in Trumbull such women were "on occasion" excluded, but not systematically.



Petitioner next contends that persons who indicated a desire not to serve, but who were not exempted by statute, were improperly excused. The only support for this in the record is that in Easton and Fairfield, to an extent not defined, some uncertain number of people for whom jury service would have been a special hardship were improperly excluded.

Third, petitioner contends that jury committee members improperly excluded husbands, in favor of their wives, when it appeared that a family would lose the husband's income if he were required to serve on a jury. This appears to have been the case in Easton, Shelton, and Fairfield, although, again, the impact on the array is not at all certain.

Petitioner's fourth contention is that unskilled wage earners were excluded, out of the same deference to their greater susceptibility to economic injury. The record shows that in Easton such persons were "more likely to be excluded." Similarly, in Westport executives were more apt to be included, except for those whose business was known to depend on their ability to travel frequently.

The fifth objection is that the jury committee members impermissibly exercised personal judgment in deter-

mining eligibility for jury service. In Easton the committee members considered good character, fair education, and hardship. In Westport the committee members were concerned with making certain they had a cross-section of the community, and in Fairfield the use of judgment is alleged but not



specified. As in the other categories, no showing is made as to the effect of this practice on the composition of the array.

Petitioner's sixth objection concerns not improper exclusion, but rather the improper inclusion of persons on the array. Jury committees are alleged to have solicited volunteers for jury service in violation of the statutory command to use the voting lists as the exclusive source of names. This does appear to have happened in Easton, Shelton, Fairfield, and Stratford, but there is virtually no documentation of the extent to which such solicitation bore fruit. The only figure offered concerns Shelton, where the trial court found that volunteers comprised less than five per cent of the jury list.

Finally, petitioner complains that the jury was not selected at random from the voting lists. This allegation appears to be nothing more than a restatement of the objection to the solicitation of volunteers.

The mere fact of statutory violation does not con-

stitute a deprivation of constitutionally protected rights, Bokulich v. Jury Commission, 298 F.Supp. 181, 192 (N.D. Ala. 1968)(three-judge court), aff'd on other grounds, 394 U.S. 97 (1969), and the record presented by petitioner does nothing more than establish occasional statutory violations. Petitioner has failed to show the exclusion of any identifiable class of persons. The only evidence petitioner presents shows that 55% of the potential jurors from the six towns of whose procedures he complains were women, and that in eight other



towns only 43% were women. This statistic does not tend to establish the exclusion of any particular category of persons at all, and certainly not the exclusion of women, husbands, or wage earners. Compare, e.g., Quadra v. Superior Court, supra; Mayfield v. Steed, 345 F.Supp. 806 (E.D. Ark. 1972), aff'd, 473 F.2d 691 (8th Cir. 1973).

None of petitioner's claims focuses on the central question, the extent to which the several statutory violations affected the composition of the array. Cf. United States v. Flynn, 216 F.2d 354, 385 (2d Cir. 1954). In affirming petitioner's conviction, the Connecticut Supreme Court correctly concluded that the source of the Fairfield County jury list "reasonably reflect[ed] a cross-section of the population suitable in character and intelligence for that civic duty." Brown v. Allen, 344 U.S. 443, 474 (1953).

Petitioner's final claims concern the trial court's

admission into evidence of inculpatory statements made by petitioner while in police custody after being arrested for this offense. Petitioner first contends that the content of the Miranda warnings given him, both orally and in writing, does not comply with the requirements of Miranda v. Arizona, 384 U.S. 436 (1966). Both the state court's finding regarding the oral warnings,[5/] and the text of the "Notification of Rights" form[6/] signed by petitioner and introduced into evidence at his trial, are set out in the margin. Petitioner's brief does not explain the respect in which he thinks these warnings are deficient, and the Court finds that they comply fully with Miranda's requirements.



The second contention is that the state courts erred as a matter of law in determining that it was proper to admit statements made by petitioner after receiving these warnings. To explore this contention it is necessary to set out in some detail the events that followed petitioner's arrest. Petitioner alleges no facts that differ significantly from those found by the state court after a hearing on petitioner's motion to suppress, and the Court will accordingly rely on those findings. Petitioner was arrested on a Circuit Court warrant on May 16, 1967, and immediately advised that he was being charged with murder. The detective who arrested him also explained to him his right to remain silent and to the assistance of counsel, see note 5, supra. The Court found

that petitioner had several prior arrests and court appearances and on those occasions had been advised of his rights. Following his arrest petitioner was taken to the Bridgeport Police Station and was asked to read the Notification of Rights form set out in footnote 6, supra. The trial court found, and petitioner does not contest, that petitioner read the form, was asked if he understood it, answered in the affirmative, and signed it. The court also found that petitioner did in fact understand what the form meant when he signed it.

After accepting notice of his rights, cf. Oregon v. Hass, ___ U.S. ___, 43 U.S.L.W. 4417 (1975), petitioner had a conversation with a detective, in which he spoke freely. The Court found that although the detective may have asked an occasional question during the conversation, he did not interrogate petitioner. The Court also found that the



detective told petitioner the police did not want a statement from him because they had all the evidence they needed. The detective told petitioner that the police knew he had been in the victim's apartment, had participated in the murder, and that he had drunk beer in the apartment and wiped fingerprints off the refrigerator. When the detective mentioned the latter two events, petitioner replied that he had not performed either act but that the other participant in the murder had. Petitioner then began to relate details on his own, and

admitted that he had hit the victim in the face and lowered him to the floor to keep him from falling, that he had gone through the victim's pockets, and that the other participant had forced open a box found on the bed.

After this conversation petitioner was taken for fingerprinting and processing, after which he said to the detective that he [petitioner] should talk to his lawyer,[7/] or that he wanted to see a lawyer "before I tell you what actually . . . happened." Prior to this point petitioner had not requested permission or expressed any desire to see or telephone an attorney. As soon as he mentioned calling his attorney, the detective placed a telephone in front of him and told him he could make as many calls as he wanted and could call anyone he wanted to. Petitioner then called his grandmother, and asked her to come to the police station. He requested and was given permission to wait for his grandmother in the detective's office. When his grandmother arrived at the police station, petitioner spoke with her for between five



and ten minutes in an interrogation room provided them by the police.[8/] As petitioner and his grandmother left the interrogation room and re-entered the presence of the police officers, petitioner made certain incriminating statements. Then, in the presence of the police officers, petitioner's grandmother asked petitioner why he had gone to the apartment,

and petitioner responded by saying "We went there to mug a man and he is dead," or "We went there to mug a man and he is killed." The grandmother then left the police station, petitioner returned to the detective's office and there "offered" to tell the detective what had happened. He then told the complete story of the robbery and murder, except that he refused to reveal the identity of the other participant. A number of times during petitioner's recitation the detective told petitioner that the police "didn't want anything from [him and] didn't care whether [he] told him about the thing or not."

Petitioner does not indicate whether his argument is that all these statements should have been excluded, or only that the recitation that followed his grandmother's visit should have been excluded. However, the claim of law presented to and ruled on by the State Supreme Court, and renewed in this federal habeas corpus petition, is that the admission of the statements following petitioner's request for a lawyer was error because the police failed to provide counsel before the statements were given, and because petitioner had not knowingly or intelligently waived either his right to remain silent or his right to consult with an attorney.

With respect to the statement made prior to the request for an attorney[9/] the issue is solely whether or not petitioner's decision to refrain from invoking his rights was voluntary and understanding,[10/] United States v. Guzman-Guzman, 488 F.2d 965, 966 (5th Cir. 1974). If petitioner understood his rights and volunteered the statements, then their admission into evidence was proper. United States v. Kaylor, 491 F.2d 1127 (2d Cir. 1973), sentence vacated and case remanded for resentencing, 491 F.2d 1133 (1974)(en banc), cert. granted and judgment vacated on other grounds sub nom. United States v. Hopkins, 418 U.S. 909 (1974); United States v. Gaynor, 472 F.2d 899 (2d Cir. 1973). Moreover, petitioner need not have made an explicit statement waiving his rights, so long as the record supports the conclusion that the waiver was understanding and voluntary. United States v. Guzman-Guzman, supra; United States v. Johnson, 474 F.2d 6 (9th Cir. 1973).

The unchallenged findings of the state judge support the conclusion that petitioner knowingly and intelligently waived his rights and, while listening to the detective set forth the evidence against him already in the possession of the police, elected to volunteer what amounted to a confession. Although it might have been preferable for the detective to have refrained from conversation with the defendant until after procuring an explicit waiver, the conversation as des-

cribed in the finding deprived petitioner of no constitutional right, even if the detective hoped to elicit incriminating statements from petitioner. Cf. United States v. Collins,



462 F.2d 792 (2d Cir. 1972). There is no evidence of trickery or coercion, and petitioner was offered no inducement to confess. His later request to see an attorney is strong evidence of his having in fact understood his rights, United States v. Carneglia, 468 F.2d 1084 (2d Cir. 1972), as is his previous experience with police and courts on occasions where he also received explanations of his rights. The statement given here appears to have been given in a conversation in which petitioner participated freely and voluntarily, and with complete understanding of what he was doing. The Court so finds. Compare Holloway v. United States, 495 F.2d 835 (10th Cir. 1974).

With respect to the statements made after petitioner commented that he should talk to an attorney, the most important fact found at the hearing conducted by the trial judge was that when petitioner expressed the desire to consult with counsel, the conversation between the detective and petitioner ceased. The detective made no effort to get petitioner to continue the narrative he had already begun, and immediately gave him unlimited access to a telephone.[11/]

When petitioner's grandmother arrived at the station, she was permitted to confer with him in apparent secrecy, see

note 8, supra, and the first incriminating statement made by petitioner thereafter and admitted into evidence at the trial was made to his grandmother by petitioner as the two emerged from the interrogation room. No police officer had any part in eliciting the admission from petitioner. The statement was a continuation of a conversation he was having with his



grandmother; the police cannot be penalized because he chose to have part of that conversation in their presence. The trial judge properly allowed this statement to go to the jury.

Even after this statement, the record does not support the contention that the police either resumed or began interrogating petitioner. The record shows that petitioner's grandmother, just before she left, urged him to tell the truth. There is no evidence that the police had asked her to urge petitioner to confess, or that she was in any other way acting as an agent of the police. After she left and apparently because of her urgings, but certainly without having been solicited by the police, petitioner "offered" to and did tell them the entire story, although at several points during his recital the detective told him they did not want any statement from him.

Admittedly, the police did not again inform him of his rights and ask explicitly whether he had changed his mind and now wished to talk to them without an attorney. Had they

to make an unsolicited confession, their failure would probably have precluded use of his answers. See United States v. Collins, supra, 462 F.2d at 801, 802, where the Second Circuit vacated its order that the case be reheard en banc, but commented that when a suspect in custody requests an attorney, "we are agreed that what Miranda requires is that 'interrogation must cease' until new and adequate warnings have been given and there is a reasonable basis for inferring that the suspect has voluntarily changed his mind." (Emphasis added.)



The standard must be less stringent when the police do not resume interrogation. The record here adequately supports the conclusion that petitioner had voluntarily changed his mind, and the repeated invitations to stop were, on this record, a sufficient reminder of his rights. While it would have been better practice to secure a written waiver of the right to counsel, compare United States v. Hodge, 487 F.2d 945 (5th Cir. 1973), such explicitness is not a constitutional requirement. See United States v. Anthony, 474 F.2d 770 (5th Cir. 1973). Petitioner presents no evidence that the police somehow tricked him into making this statement, compare Williams v. Brewer, 375 F.Supp. 170 (S.D. Iowa 1974); neither does he contend even that the police urged him to reconsider his decision to seek an attorney's assistance

voluntary decision to confess, made by a murder suspect well aware of both his own guilt and the mounting evidence against him. It is entirely appropriate for the police to accept such a statement, and for a jury to be permitted to hear it.

Accordingly, the petition for a writ of habeas corpus is dismissed on its merits.

Dated at New Haven, Connecticut, this 5 day of May, 1975.

Jon O. Newman

Jon O. Newman
United States District Judge

FOOTNOTES

1/ Connecticut has no statute that governs the method of selecting and summoning grand jurors. See State v. Cobbs, supra, 164 Conn. at 408.

2/ "The case at bar does not involve a case of racial discrimination in the selection of the grand jury . . . ." Petitioner's br. at 24.

3/ Petitioner also argues that the list had been in existence without significant change for such a long period that it could not "reflect the relative changes in the size of the various elements that composed the Fairfield County population." Br. at 26. Petitioner offers no empirical evidence in support of this contention, and without such a presentation it is unnecessary for the Court to determine whether such an allegation states a claim, but see United States v. Butera, 420 F.2d 564, 571-72 (1st Cir. 1970). Cf. United States ex rel. Chestnut v. Criminal Court, supra, 442 F.2d at 616.

4/ In any event, petitioner's claim concerning the exclusion of Bridgeport residents overstates the evidence. The sheriff avoided residents of Bridgeport, but there has been no showing that this avoidance amounted to a systematic exclusion of such residents.

5/ The trial court found that

> At the time the defendant was arrested he was advised by Sergeant Anthony Fabrizi of the charge for which he was being arrested; that he had a right to remain silent; that anything he said could and would be used against him in a court of law; that he had a right to an attorney; and that if he could not afford an attorney, one would be provided for him by the State prior to any questioning.

6/ The Notification of Rights form reads as follows:

> I, James L. Cobbs, before questioning have been advised by Det. Lt. Fabrizi that I have a right to remain silent and anything I say can and will be used against me in a court of law. I have also been advised of my right to the presence of an attorney (lawyer) during questioning and if I cannot afford a lawyer one will be appointed for me prior to any questioning.

7/ Despite the use of the word "his," the record shows that petitioner did not have an attorney at this point, and in fact was not represented by counsel until after his arraignment.

8/ Petitioner's conversation with his grandmother in the conference room was monitored and recorded by the police, and the trial judge refused to allow the jury to hear either the tapes or testimony about the conversation.

9/ Petitioner asked the trial court to find that he had requested an attorney immediately after being given his rights. That request was explicitly rejected and the claim has apparently been abandoned.

10/ Petitioner was nineteen at the time of this arrest. No claim is made that his age made him incapable of understanding the nature of his waiver, and absent documentation of mental retardation or other disability, no such claim



would be sustained. Compare United States v. Collins, supra; and Hughes v. Swenson, 452 F.2d 866 (8th Cir. 1971), with Culombe v. Connecticut, 367 U.S. 568 (1961).

11/ The police did not provide petitioner with an attorney at this point. Had they continued to interrogate petitioner, responses to questions elicited under these circumstances would of course have been excluded.

CIVIL DOCKET

ITED STATES DISTRICT COURT

CIVIL

Jury demand date:

B74 262

rm No. 106 Rev. U. S. Court of Appeals #75-2089

| TITLE OF CASE | ATTORNEYS |
|---|---|
| JAMES L. COBBS<br><br>VS.<br><br>CARL ROBINSON, WARDEN,<br>CONNECTICUT STATE PRISON, SOMERS,<br>CONNECTICUT | For plaintiff: Eric M. Gross<br>Bernard Green<br>Tremont and Green<br>64 Lyon Terrace<br>Bridgeport, Conn. 06604<br><br>For defendant:<br>Donald A. Browne<br>State's Attorney for Fairfield County<br>1061 Main Street - County Court House<br>Bpt., Ct. |

| STATISTICAL RECORD | COSTS | | DATE 1974 | NAME OR RECEIPT NO. | REC. | DISB. |
|---|---|---|---|---|---|---|
| mailed | Clerk | | 7/10 | F/Pauperis | | |
| mailed | Marshal | | | | | |
| of Action: Petition for<br>of Habeas Corpus | Docket fee | | | | | |
| | Witness fees | | | | | |
| arose at: | Depositions | | | | | |

74 262 B74 26

| DATE 1974 | PROCEEDINGS | Date Order Judgment N |
|---|---|---|
| 7/10 | Motion for Leave to Proceed in Forma Pauperis, filed. Endorsed: "Motion granted". NEWMAN, J. M-7/12/74 Copy to Atty. Green. | #1 |
| 7/10 | Forma Pauperis Affidavit, filed. | #2 |
| 7/10 | Petition for Writ of Habeas Corpus, filed. | #3 |
| 8/7 | ORDER TO FILE ANSWER, filed and entered. Newman, J. Ordered that respondent file an answer on or before 8/20/74; that service by U.S. Marshal of this order, together with copy of verified petition, on the respondent, Carl Robinson, Warden, on or before 8/9/74. Copy to ~~petitioner, also~~ J.O.N. and Atty. Green. M-8/8/74 | #4 |
| 7 | Attested copies of Order to File Answer and copies of petition along with Form 285 (2) forwarded to the Marshal for service on Carl Robinson, Warden, and Atty. General of Conn. | |
| 8/13 | Marshal's return showing service, filed. Warden Robinson by John Reardon. Petition and Order to File Answer. | #5 |
| 8/13 | Marshal's return showing service, filed. Atty. Gen'l Killian by Faith Dennis, Secretary. Petition and Order toFile Answer. | #6 |
| 22 | Appearance of Donald A. Browne, Esq., entered for respondent. | #7 |
| 8/22 | Return to Order to Show Cause, filed by respondent. | #8 |
| 11/1 | Transcript of Trial and Penalty Hearing April 19 - April 29, 1968, in State of Conn. v. James L. Cobbs, filed. | |
| 11/1 | Transcript of Hearing on Plea in Abatement and Motion to Quash Grand Jury Indictment February 16, 1968, in State of Conn. v. James L. Cobbs, filed. | |
| 11/1 | Transcript of Hearing on Motion for Production and Disclosure January 26, 1968, in State of Conn. v. James L. Cobbs, filed. | |
| 11/1 | Transcript of Hearing on Challenge to the Array April 4, 1968, in State of Conn. v. James L. Cobbs, filed. | |
| 11/1 | Transcript of Voir Dire Examination April 10 - April 19, 1968, in State of Conn. v. James L. Cobbs, filed. | |
| 11/1 | Defendant's Appeal Brief in State of Conn. v. James L. Cobbs, filed. | |
| 11/1 | Exhibits in State of Conn. v. James L. Cobbs, filed. | |
| 11/1 | Exhibits in State of Conn. v. James L. Cobbs, filed. | |
| 11/21 | Memorandum of Law in Support of Petition for Writ of Habeas Corpus, filed. | |
| 12/4 | Memorandum of Law in Opposition to Petition for Writ of Habeas Corpus, filed. | |
| 75 5/6 | Memorandum of Decision, filed and entered. Newman, J. Petition for writ of habeas corpus is dismissed on its merits. M-5/6/75. Copies to Attorneys Green and Browne, Judges, Magistrate, U. Conn. Law Review. | |

. 110 Rev. Civil Docket Continuation

| DATE 1975 | PROCEEDINGS | Date Ord Judgment |
|---|---|---|
| 5/7 | Judgment, filed and entered. Ordered that judgment be and is entered in favor of respondent and petition for writ of habeas corpus is dismissed. Markowski, C. M-5/7/75. Copies to Attorneys Browne and Green. | |
| /30 | Petitioner's Notice of Appeal from judgment entered 5/7/75, filed. Copy to Atty. Gross. | |
| /30 | Petitioner's Motion for Leave to File in Forma Pauperis, filed. (re: Appeal) | |
| /30 | Civil Appeals Management Plan and Forms C and D handed to Atty. Gross. | |
| /3 | Petitioner's Motion for Leave to File in Forma Pauperis (re: Appeal), endorsed: "Motion granted." NEWMAN, J. M-6/4/75 Copies to Attys. Gross and Green. | |
| /4 | Certified copies of Docket Entries, Notice of Appeal and Motion for Leave to File in Forma Pauperis with Order, thereon, forwarded Clerk, U. S. Court of Appeals. | |
| /4 | Copy of Notice of Appeal and Motion for Leave to File in Forma Pauperis with Order, thereon, sent Atty. Donald Brown. | |
| /20 | Petitioner's Motion for Certificate of Probable Cause, filed. | |
| /20 | Petitioner's Motion for Certificate of Probable Cause, endorsed: Motion granted. Newman, J. M-6/23/75. Copies to Attorneys Gross, Green and Browne. | |
| /24 | Certified copy of endorsed Motion for Certificate of Probable Cause and attached Affidavit of Bernard Green mailed to Clerk, U. S. Court of Appeals. | |
| /30 | Civil Appeal Scheduling Order from U. S. Court of Appeals, filed. (Record on Appeal due on or before July 28, 1975.) | |